

## **REMARKS**

### **I. Status of Claims and Formal Matters**

Claims 1-50 are pending in the application. Claims 20-50 are withdrawn as directed to non-elected subject matter. Claims 1, 5 and 6 have been amended to correct the written formula to read as -C(=O)-R-COG. Support for these amendments can be found, for example, at page 4, line 23 of the instant specification. Claim 11 has been amended to recite that said "polymer is comprised of subunits." Support for this amendment can be found, for example at page 3, line 28. Claim 19 has been amended to correct the claim dependency. No new matter has been added by these amendments. Applicants respectfully reserve the right to pursue any canceled or otherwise unclaimed subject matter in one or more continuation, continuation-in-part, or divisional applications.

### **II. Rejections under 35 U.S. C. §112**

Claims 1-19 stand rejected under 35 U.S.C § 112, second paragraph as being indefinite. The Examiner alleges that the formula recited in claims 1, 5 and 6 is in error and that the formula as written does not contain the number of bonds to complete the formula. Upon careful reconsideration, Applicants respectfully have amended the claims and specification in accordance with the Examiner's suggestion. Support for these amendments can be found, for example, at page 4, line 23 of the instant specification.

The examiner also alleges that the metes and bounds of subject matter of claim 10 cannot be determined as the specification does not disclose what heteroatoms can be included in the R group. Applicants respectfully disagree. Claim 1 defines R as alkyl, alkenyl or aryl. Page 7, line 8 through Page 8, line 19 defines these terms and includes a number of exemplary hetero substituted alternatives. Applicants respectfully submit that one of skill in the art, armed with the definitions in the specification would readily recognize the heteroatoms which could successfully be incorporated into the R group without undue experimentation.

The Examiner further alleges that claim 11 is drawn to a single polymer compound and thus lacks proper antecedent basis by using the phrase "and mixtures thereof". Applicants respectfully disagree. Applicants point out that Claim 11 is drawn to a polymer compound made up of monomer subunits. Each of these subunits can comprise different substituents. As such, the mixtures referred to in claim 11 are these different subunits. To that end, Applicants have amended claim 11 to clarify this distinction. No new matter has been added by this amendment.

Finally, the Examiner alleges that the therapeutic agent recited in claim 19 lacks clear antecedent basis. Claim 19 has been amended to correct the claim dependency. Antecedent basis is now clearly found in claim 15.

Accordingly, reconsideration and withdrawal of all rejections under 35 U.S.C. § 112 are respectfully requested for claims 1-19.

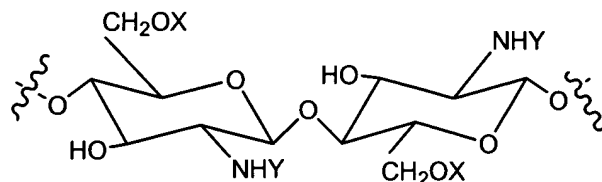
### **III. Rejection under 35 U.S.C. § 102(b)**

Claims 1-8 and 11-19 stand rejected under 35 U.S.C. § 102(b) as anticipated by United States Patent No. 5,888,988 to Elson ("Elson"). In particular, the Examiner alleges that Elson discloses succinylated N,O-carboxymethyl chitosan (NOCC) prior to the linking of succinate moieties of a second NOCC chain are bound. Applicants respectfully traverse.

'Prior art under § 102(b) must sufficiently describe a claimed invention to have placed the public in possession of that invention. *In re Donohue*, 766 F.2d 531, 533 (Fed. Cir. 1985). "[I]nvalidity based on anticipation requires that the assertedly anticipating disclosure enabled the subject matter of the reference and thus of the patented invention without undue experimentation." *Elan Pharmaceuticals, Inc. v. Mayo Foundation for Medical Education and Research*, 346 F.3d 1051, 68 USPQ2d 1373 (Fed. Cir. 2003).

Applicants respectfully assert that the single-sentence teaching of Elson, (Such bridging can be accomplished by reaction of NOCC with, e.g., succinic anhydride to

provide succinylated NOCC..." in the absence of any other teaching lacks enablement for the full scope of the claims. Indeed, one of skill in the art, armed only with the once sentence teaching of Elson, would not be able to make or use an N-acylated chitinous polymer, comprised of subunits of the formula:



wherein at least 10% of X groups on said polymer are  $-(CH_2)_bCOOZ$  or  $-(CH_2)_bCOG$  and at least 1 % of Y groups on said polymer are  $-C(=O)-R-CO_2Z$  or  $-C(=O)-R-COG$  without undue experimentation.

Since the teaching of Elson is insufficient to place the public in possession of the claimed invention, reconsideration and withdrawal of all rejections under 35 U.S.C. § 102(b) are respectfully requested for claims 1-8 and 11-19.

#### IV. Conclusion

In view of the above amendment, applicant believes the pending application is in condition for allowance.

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Respectfully submitted,

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